Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

<u>COMMENTS OF GVNW CONSULTING, INC.</u>

In response to the Commission's Notice of Proposed Rulemaking (NPRM) released April 27, 2001 and published in the Federal Register on May 23, 2001, seeking comments on or before August 21, 2001, GVNW Consulting, Inc. respectfully presents its comments. GVNW Consulting, Inc. is a management-consulting firm, which provides consulting services to independent telephone companies. We offer the following comments on the feasibility of using a bill and keep approach to achieve a unified regime for intercarrier compensation, and specifically focus on the statement in paragraph 4 of the NPRM that indicates a desire to achieve "*the eventual application of bill and keep to interstate access charges*." Such a proposal would radically alter the way that traditional access charge revenue requirements are recovered from rural customers.

Introduction and Background

In seeking long-term solutions to intercarrier compensation issues, the Commission has drawn from two December, 2000 FCC Office of Plans and Policy (OPP) white papers (#33 and #34) to present two specific bill and keep proposals for comment. In OPP # 33 – Bill and Keep at the Central Office as the Efficient Interconnection Regime – the author offers as an option the "Central Office Bill and Keep (COBAK)" proposal. The second proposal, found in OPP # 34 – A Competitively Neutral Approach to Network Interconnection, is driven by a proposal to "Bill Access to Subscriber – Interconnection Costs Split (BASICS)". Both approaches treat local access facilities in a similar manner, as these costs are recovered from end users and not interconnecting carriers. Transport costs are treated differently by the two proposals. COBAK suggests that the calling party's network is responsible for the cost of bringing the call to the called party's central office. Under BASICS, the networks divide equally the costs resulting from pure interconnection.

At paragraph 97, the Commission asks the question:

> "What comes after CALLS? We recognize that large ILECs, small ILECs, and CLECs are all at different stages of the access reform processes …"

We believe that for any evaluation of the applicability of bill and keep to rural areas, the Commission should use criteria that include, but are not necessarily limited to:

1) Does the proposal promote infrastructure investment?

2) Do the resulting rural customer charges meet the test of "comparable rates" when compared to urban areas?

We present data (interstate impacts only) in the Exhibits that indicates that the resulting rural customer charges would be excessive in a large number of cases.

A BILL AND KEEP MECHANISM AS PROPOSED IN THE NPRM, IF APPLIED TO RURAL COMPANY INTERSTATE ACCESS CHARGES, WILL SEVERLY IMPACT RURAL UNIVERSAL SERVICE DUE TO THE LEVEL OF RURAL CUSTOMER CHARGES THAT WE PRESENT IN THE EXHIBITS

At paragraph 123, the Commission seeks input as to "how significant any increase in flat-rated charges may be". This is a particularly important issue, as Section 254(b)(3) requires that consumers in rural, insular, and high cost areas should have access to services that are reasonably comparable to those provided in urban areas at "reasonably comparable" rates.

The Tenth Circuit Court of Appeals recently addressed the issue of "reasonably comparable" rates in their decision on the Commission's Ninth Order in CC Docket No. 96-45. In that decision, the Tenth Circuit states in part:

> *For example, Vermont and Montana assert that some rural rates will be 70-80% higher than urban rates under the FCC's funding mechanism. We fail to see how the FCC's definition of "reasonably comparable" illuminates this dispute. Does the FCC contend, for example, that a 70-80% discrepancy is within a "fair range" of rates? We doubt that the statutory principle of "reasonabl[e] comparab[ility]" can be stretched that far.*

If the 10th Circuit Courts' standard is ultimately what is to apply, then the data for the 58 companies in the GVNW sample show a wide range of impacts, with many cases showing that the resulting increase necessary under a bill and keep scenario would exceed 80 % and be deemed to not be reasonably comparable.

We anticipate that this opening round of comments in the NPRM signals the start of a long analytical process, one that may well include several Joint Board deliberations.

In order to begin the important process of quantitatively analyzing the impacts of implementing **interstate** bill and keep for access charges for rural carriers, we provide an extensive data filing (no intrastate data) in the Attachments A -H. As shown in Appendix G, Appendix pages 20-22, the impact of additional **interstate** costs to be recovered from end users on a per line per month basis is significant and summarized in the table below.

Total Companies in Appendix G sample	58
Number of companies with per line per month increase greater than $20	41
Number of companies with per line per month increase greater than $30	24
Number of companies with per line per month increase greater than $40	17
Number of companies with per line per month increase greater than $50	12
Number of companies with per line per month increase greater than $60	5
Number of companies with per line per month increase greater than $100	3

The results summarized above for Appendix G data, and detailed in Appendix A-H, demonstrate that the test of reasonable comparability of rates is not met for the majority of the companies in this sample. We also note that Appendix H, detailing the additional **interstate** costs to be recovered from end users on a per minute basis, indicate similar results to the data summarized above from Appendix G. We encourage others to test this data and begin the important quantitative analysis process, including quantifying the concomitant **intrastate** impacts, that must occur if the mandates of universal service that are found in section 254 are to continue to be realized for rural Americans.

WHAT ARE THE PRIMARY CAUSES OF THIS UNACCEPTABLE LEVEL OF CHARGES FOR RURAL CUSTOMERS?

At paragraph 5 of the NPRM, the Commission states in reference to existing regimes that: "These regulations treat different types of carriers and different types of services disparately, **even though there may be no significant differences in the costs among carriers or services." (emphasis added)** This is not a universally true statement.

Simply stated, rural is different. Rural rate of return companies exhibit significant variations in both study area size and customer base. While many small companies lack economies of scope and scale, they are efficient in provisioning universal service to hard to serve territories. In the record in CC Docket No. 96-45, extensive data was placed in the Rural Task Force proceeding record that formed the basis for the Commission's RTF universal service decision (FCC 01-157). The Rural Task Force (RTF) via its White Paper 2, entitled <u>The Rural Difference</u>, released in January 2000, offered a very detailed analysis of the major rural carrier differences, which we believe that certain parties may not have had an opportunity to review, including the OPP White Paper 33 and 34 authors. Therefore, we offer these excerpts from the RTF's exhaustive empirical analysis of the rural difference:

1) Rural carriers serve more sparsely populated areas. The average population density is only 13 persons per square mile for areas served by rural carriers compared with 105 persons per square mile in areas served by non-rural carriers.
2) There is significant variation in study area sizes and customer bases among rural carriers. The average population density of areas served by rural carriers varies dramatically. Rural carriers in Alaska and Wyoming serve populations

of 0.58 and 1.25 persons per square mile respectively, while rural carriers in some states serve populations of over 100 persons per square mile.

3) The isolation of areas served by rural carriers results in numerous operational challenges. Rural carriers experience difficulty and high cost in moving personnel, equipment and supplies to remote and insular communities. More resources, including duplicate facilities and backup equipment are required to protect network reliability.

4) Compared to non-rural carriers, the customer base of rural carriers generally includes fewer high-volume users, depriving rural carriers of economies of scale. Non-rural carrier study areas typically have higher business customer density than rural carrier study areas.

5) Compared to customers of non-rural carriers, customers of rural carriers tend to have a relatively small local calling scope and make proportionately more toll calls. Seventy to eighty percent of customers of smaller rural carriers can reach less than 5,000 other customers with a local call.

6) Rural carriers frequently have substantially fewer lines per switch than do non-rural carriers, providing fewer customers over which to spread high fixed network costs. On average, rural carriers have only 1,254 customers per switch compared to over 7,000 customers per switch for non-rural carriers.

7) Total investment in plant per loop is substantially higher for rural carriers than for non-rural carriers. On average, total plant investment per loop is over $5,000 for rural carriers compared to less than $3,000 for non-rural carriers.

8) Plant specific and operations expenses for rural carriers tend to be substantially higher than for non-rural carriers. On average, plant specific expenses per loop are $180 for rural carriers compared to $97 per loop for non-rural carriers.

THE NPRM BILL AND KEEP PROPOSALS DO NOT APPEAR TO BE SUPPORTED BY A STRONG LEGAL BASIS

Paragraph 121 of the NPRM seeks comment on whether the Commission has legal authority to establish a bill-and-keep regime to replace interstate access charges. Based on the positions presented in the NPRM that are supported by OPP White Papers 33 and 34, it appears at this juncture that the Commission would find an order that replaces interstate access charges with a bill-and-keep regime, without a concomitant universal service funding offset, overturned in court. The majority of court cases over the past decades have supported the ability of the rural carrier to have the opportunity to recover the revenue requirement associated with the provision of universal service.

The Commission has certain responsibilities and may not terminate certain of its obligations to rural carriers. Rural carriers have constitutional protections from takings under the Fifth and Fourteenth Amendments, thus requiring the FCC to recognize the interests of rural carrier investors. The "end-result" test of the 1944 *Federal Power Commission v. Hope Natural Gas Co.* (320 U.S. 591) is relevant with respect to bill and keep proposals for interstate access charges.

In *Duquesne* [Duquesne Light Co. v. Barasch, 488 U.S. 299, 308 (1989)], the Court reaffirmed the Hope precedent that it is the overall effect of rate regulation that matters: *"[I]t is not theory but the impact of the rate order which counts."* The data reflected in the Exhibits demonstrates that the rate impact of a bill and keep rate order would be patently unreasonable.

The Commission must seek revised rules that are efficient and lawful.

ANY REFORM TO INTERSTATE ACCESS RULES MUST PERMIT THE RECOVERY OF INFRASTRUCTURE COSTS WITHOUT PENALIZING RURAL CUSTOMERS

At paragraph 124 of the NPRM, the Commission queries:

> *"We also seek comment on how a bill-and-keep regime would impact universal service. Specifically, we seek comment on whether a bill-and-keep approach would affect the Commission's ability to preserve and advance universal service through specific and predicable support mechanisms as required by the Communications Act. (footnote to section 254 omitted)"*

The regulatory environment created by a bill and keep regime for rural carriers, portrayed by the quantitative data shown in the Exhibits to this filing, is more deleterious than the proposal that the Commission rejected in its Rural Task Force (RTF) Order last May with respect to freezing high cost loop support per line upon entry of a eligible (ETC) designated competitor. In its May 10, 2001 RTF universal service ordering paragraphs, the Commission cited the filing of one rural carrier (FCC 01-157, footnote 341) that stated in a separate Eligible Telecommunications Carrier (ETC) proceeding that a freeze of such support would "severely constrain" its ability to upgrade plant and provide quality service in the area.

Under the scenario reflected in the Exhibits to this filing, many rural carriers would find themselves unable to recover prudently placed investments, which would in turn act as a major disincentive to expanding a broadband capable network in rural service areas. Such an outcome of access reform would be at cross-purposes with the directive in the 1996 Act that policies enacted should "accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans."

CURRENT BILL AND KEEP PROPOSALS CONTAIN ERRONEOUS ASSUMPTIONS ABOUT PRECEDENTS AND THE EQUALITY OF COSTS

Claiming precedent is not proving precedent

At paragraph 41, the Commission opines that the bill-and-keep proposals may be seen as following the precedent of the action that deregulated CPE in the 1980 *Computer II* decision. The Commission offers that this was in essence mandating interconnection at a zero interconnection rate. There is no valid comparison between the provision of CPE, formerly the terminal point in the 1970's network, and the functionalities and related cost obligations of a vast majority of the rural public switched network of the 21st century.

The economists that authored OPP Papers # 33 and # 34 wishing away carrier access charges is similar to saying that because we can reduce the income tax rate on a certain class of equipment and still not harm rural citizens, we should reduce the overall statutory tax rate for businesses to nearly zero and shift that burden to the individual tax rate structure. This is an example of taking zero interconnection rates to an illogical and harmful conclusion.

Common costs, especially for rural carriers, are a reality and may not rationally be ignored merely for the sake of "efficiency"

The problematic nature of common cost allocation is not new for regulators, and the problem is exacerbated by technological advancement. However, if we are to continue to achieve rural universal service goals, it is irrational to attempt to assume that all costs are evenly distributed throughout the public switched network. We note that in paragraph 44, the Commission recognizes rural differences by asking if bill and keep rationale would hold if: ". . . (3) the two networks had dissimilar costs or cost structures (e.g., one network exhibited significant economies of scale); …" We offer that the dissimilar structure of costs reflected in the Exhibits to this filing invalidates any logical rationale for bill and keep for interstate access charges, absent large increases to universal service support funding.

In paragraph 34, the Commission raises the issue of providing a clean demarcation point between networks, "so that regulators need not allocate costs." This is erroneous. At least for rural universal service to be realized, there must be some level of regulatory intervention and allocation of costs if we are to maintain "comparable rates for comparable services".

At paragraph 27 of the NPRM, the Commission references the Atkinson-Barnekov proposal assumption that fully provisioned networks face the same costs per unit of facilities. As cited in the Exhibits to this filing, this is not true for many rural carriers. While all may be well in the imaginary land of symmetry, one of the key Rural Task Force White Paper 2 conclusions is that rural carriers are different from urban carriers, as well as demonstrate vast diversity within the rural subset itself.

CURRENT BILL AND KEEP PROPOSALS ARE NOT "GEOGRAPHICALLY" NEUTRAL AND PROVIDE NO RECOGNITION OF RURAL CIRCUMSTANCES

The regulatory debate of the last five years has focused on "neutrality" issues. Regulators have sought to formulate policies that are both competitively and technologically neutral, in order to bring the best service to the ultimate reason for the regulatory burden – the end user customer. After a careful review of the NPRM proposals, it appears that the neutrality goals are being violated with respect to customer location.

In OPP Paper # 33, paragraphs 103-108 address the issue of identifying central offices, as COBAK's second rule assigns the calling party's carrier responsible for the cost of transporting the call to the called party's central office. At paragraph 107, Mr. DeGraba states: "An alternative approach would be to specify that, in order [to] qualify as a central office, a node must connect a minimum number of customers (e.g., 50,000)." Such an assumption offers no recognition of the overwhelming majority of rural service territory in this country. As shown in RTF White Paper 2, Appendix A-7, of the 1157 rural study areas in that data sample, only 34 (2.94% of total) might qualify as the statistics show 20 study areas in the 50k-100k line size group and 14 study areas over 100k.

At paragraph 36, comments are requested on "possible advantages and disadvantages of moving to a single, unified approach to intercarrier compensation." Considering the other points raised in this pleading, the bill and keep proposals as applied to interstate access charges wipe away with a single swipe 30 plus years of carefully crafted regulatory precision that recognizes differences in carrier size and structure.

AN INTERSTATE BILL AND KEEP ACCESS REGIME WOULD CREATE SIGNIFICANT PROBLEMS FOR STATES THAT DESIRE TO CONTINUE WITH AN ACCESS CHARGE RECOVERY MECHANISM.

We note with interest the recent resolution enacted at the July, 2001 NARUC meeting that states in part: "that prior to adoption, the effect of any unified or bill-and-keep regime on market issues be fully investigated by both federal and state regulators" and that "prior to further consideration of a unified or bill-and-keep system, . . . the FCC refer the proposals and cost application issues to the Separations Joint Board for purposes of determining the effect upon intrastate and interstate ratepayers and refer universal service issues to the Universal Service Joint Board."

We believe that the exhibits attached to this filing may serve as a starting point for a thorough examination of the impacts on ratepayers, which should be expanded to include an analysis of the implications of applying bill and keep to the intrastate jurisdiction. The imposition of an interstate bill and keep regime will not provide a "unified compensation" regime unless the states follow, but in fact will have the potential to increase regulatory arbitrage and would provide a less unified regime than currently if the states do not implement concomitant bill and keep scenarios.

Paragraph 101 of the NPRM seeks comment on whether "advances in technology have provided carriers with essentially inexhaustible capacity, and whether the additional costs of delivering a call that originates on a competing carrier's network currently approach zero." This again demonstrates an issue that should be reviewed by the Joint Board apparatus within a context that recognizes differences in cost structure between urban and rural carriers.

CONCLUSION

The proposed bill and keep proposals shift virtually the entire interstate access charge revenue requirement amount to end users in the form of per minute or flat rate charges. Bill and keep proposals as offered in this NPRM ignore the dynamic tension provided in TA 96 of section 251 and 252 competitive stimulation, while maintaining universal service in rural America as codified in section 254.

Access charges represent a significant portion of a rural carriers' revenue stream.

In his statement with this NPRM, Chairman Powell analogized the Telecommunications Act of 1996 as the hub, and individual carriers as the spokes of the wheel. As demonstrated empirically in our exhibits, absent significant increases in rural universal service support, current bill and keep proposals would act as a giant stick thrust between the rural spokes, causing damage to the bike and serious injury to the rural rider. We urge the Commission to continue, as it has with its RTF Order, to recognize rural differences.

Respectfully submitted

- electronically filed -

Kenneth T. Burchett and Jeffry H. Smith
GVNW Consulting, Inc.
8050 SW Warm Springs Street, Suite 200
Tualatin, Oregon 97062
email: jsmith@gvnw.com